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By direction of the Commission.

**April J. Tabor,**  
Secretary.

**Note:** the following statement will not appear in the Code of Federal Regulations.

### Statement of Chair Lina M. Khan

People decide what to buy, or not to buy, for all kinds of reasons. One of those reasons increasingly seems to be environmental impact. Before making a purchase, many American consumers want to know how a product contributes to climate change, or pollution, or the spread of microplastics. Businesses have noticed. Walk down the aisle at any major store—you're likely to see packages trumpeting their low carbon footprint, their energy efficiency, or their quote-unquote "sustainability."

For the average consumer, it's impossible to verify these claims. People who want to buy green products generally have to trust what it says on the box.

That's why it's so important for companies making these claims to tell the truth. If they don't, it distorts the market for environmentally friendly products. It puts honest companies, who bear the costs of green business practices, at a competitive disadvantage. And it harms consumers who want to make conscientious decisions about what products to buy and what businesses to support.

The Commission has a strong track record of suing companies for deceptive environmental claims. It has reached several multi-million-dollar settlements just in the past few years.<sup>1</sup> And, since 1992, the FTC has published the Guides for the Use of Environmental Marketing Claims.<sup>2</sup> The "Green Guides," as we call them, are administrative interpretations

<sup>1</sup> *United States v. Walmart Inc.*, Case No. 1:22-cv-00965 (D.D.C. Apr. 8, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2023173WalmartComplaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2023173WalmartComplaint.pdf); *United States v. Kohl's Inc.*, Case No. 1:22-cv-00964 (D.D.C. Apr. 8, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2023171KohlsOrder.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2023171KohlsOrder.pdf); *FTC v. Truly Organic Inc.*, Case No. 1:19-cv-23832 (S.D. Fla. Sept. 18, 2019), [https://www.ftc.gov/system/files/file=documents/cases/truly\\_organic\\_stipulated\\_final\\_order\\_0.pdf](https://www.ftc.gov/system/files/file=documents/cases/truly_organic_stipulated_final_order_0.pdf).

<sup>2</sup> The most recent revisions to the Guides occurred in 2012. See Guides for the Use of Environmental Marketing Claims, 77 FR 62122 (Oct. 11, 2012).

of the FTC Act as applied to environmental claims. They help companies avoid running afoul of the law's ban on deceptive advertising. And they clarify the boundaries for fair, legal competition.

To be effective, the Green Guides have to keep up with developments in both science and consumer perception. That's why the Commission is commencing a regulatory review of the guides.

At a broad level, the questions focus on whether any aspects are outdated and in need of revision. For example, recent reports suggest that many plastics that consumers believe they're recycling actually end up in landfills. One question, then, is whether claims that a product is recyclable should reflect where a product ultimately ends up, not just whether it gets picked up from the curb. I'm particularly interested in receiving comments, including consumer perception research, on relatively emerging environmental topics.

I'd like to thank staff for their hard work on this matter, and I encourage members of the public to submit comments to make sure their voice is heard.

[FR Doc. 2022-27558 Filed 12-19-22; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2020-0161; FRL-10428-01-R6]

### Air Plan Approval; Texas; Reasonable Further Progress Plan for the Dallas-Fort Worth Ozone Nonattainment Area

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) is supplementing a proposed approval published on October 9, 2020 ("October 2020 proposal"), for revisions to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements for the Dallas-Fort Worth (DFW) serious nonattainment area for the 2008 ozone National Ambient Air Quality Standard (NAAQS). This proposal supplements the EPA's October 2020 proposal with respect to the substitution of emission reductions of nitrogen oxide (NO<sub>x</sub>) for emission reductions of volatile organic compounds (VOC), based on comments

received during the public comment period for the October 2020 proposal. In the October 2020 proposal, the EPA proposed to approve the substitution of NO<sub>x</sub> emission reductions for VOC emission reductions but did not address how the substitution is consistent with the Clean Air Act (CAA). In this supplemental proposal, EPA is proposing to approve the substitution of NO<sub>x</sub> emission reductions for VOC emission reductions as consistent with section 182(c)(2)(C) of the CAA. The EPA is providing an opportunity for public comment on this supplemental proposal. The EPA is not reopening for comment the October 2020 proposal. Comments received on the October 2020 proposal and this supplemental proposal will be addressed in a final rule.

**DATES:** Written comments on this supplemental proposal must be received on or before January 19, 2023.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0161, at <https://www.regulations.gov> or via email to [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Carrie Paige, 214-665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Carrie Paige, EPA Region 6 Office, Infrastructure & Ozone Section, 214-

665–6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. The EPA Region 6 office encourages the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

#### SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refers to the EPA.

### I. Background

On May 13, 2020, the Texas Commission on Environmental Quality (TCEQ or State) submitted to EPA a SIP revision addressing RFP requirements for the 2008 8-hour ozone NAAQS for the two serious ozone nonattainment areas in Texas—the DFW and Houston-Galveston-Brazoria (HGB) areas. On October 9, 2020 (85 FR 64084), we published a proposed rule to approve those portions of the May 13, 2020, Texas SIP revision addressing the DFW RFP requirements.<sup>1</sup> In this supplemental proposal, we refer to the May 13, 2020, Texas SIP revision as “the RFP submittal” and we refer to our October 9, 2020, proposed action and Technical Support Document (TSD) as “the October 2020 proposal.”<sup>2</sup>

In our October 2020 proposal, we provided information on ozone formation, the ozone standards, area designations, related SIP revision requirements under the CAA, and the EPA’s implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SIP Requirements Rule (“2008 Ozone SRR”).<sup>3</sup> The DFW Area, comprising Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties was classified as Serious nonattainment for the 2008 ozone standards and as such was subject to the serious area requirements, one of which was to demonstrate reasonable further progress in reducing VOC.<sup>4</sup> In demonstrating RFP, NO<sub>x</sub> emission reductions may be substituted for VOC reductions with the appropriate justification.

Comments on our October 2020 proposal were required to be received

by November 9, 2020. We received relevant adverse comments on our proposal that included, among other comments, that our proposal did not address how the substitution of NO<sub>x</sub> emission reductions for VOC emission reductions in the DFW RFP is consistent with the CAA. Thus, we are addressing the NO<sub>x</sub> substitution in this supplemental proposal action. All comments received on our October 2020 proposal and this supplemental proposal will be addressed in the final action.

#### A. An Overview of Ozone Chemistry and NO<sub>x</sub> Substitution Effects

As explained in our October 2020 proposal, ground-level ozone is formed when VOC and NO<sub>x</sub> react in the presence of sunlight.<sup>5</sup> However, rather than varying directly with emissions of its precursors, ozone changes in a nonlinear fashion with the concentrations of its precursors. As described in EPA’s Health Risk and Exposure Assessment for Ozone,<sup>6</sup> NO<sub>x</sub> emissions lead to both the formation and destruction of ozone, depending on the local concentrations of NO<sub>x</sub>, VOC, and radicals such as the hydroxyl (OH) and hydroperoxy (HO<sub>2</sub>) radicals. In areas dominated by fresh emissions of NO<sub>x</sub>, these radicals are removed via the production of nitric acid (HNO<sub>3</sub>), which lowers the ozone formation rate. In addition, the depletion of ozone by reaction with NO<sub>x</sub> is called “titration” and is often found in downtown metropolitan areas, especially near busy streets and roads, and in power plant emission plumes.<sup>7</sup> This “titration” results in ozone concentrations that can be much lower than in surrounding areas. Titration is usually confined to areas close to strong NO<sub>x</sub> sources, and the NO<sub>2</sub> formed can lead to ozone formation later and further downwind. Consequently, ozone response to reductions in NO<sub>x</sub> emissions is complex and may include ozone decreases at some times and locations and increases in ozone at other times and locations. In areas with low NO<sub>x</sub> concentrations, such as those found in remote

continental areas and rural and suburban areas downwind of urban centers, the net production of ozone typically varies directly with NO<sub>x</sub> concentrations and increases with increasing NO<sub>x</sub> emissions.

In general, the rate of ozone production is limited by either the concentration of VOC or NO<sub>x</sub>. Ozone formation resulting from these two precursors relies on the relative sources of OH and NO<sub>x</sub>. When OH radicals are abundant and are not depleted by reaction with NO<sub>x</sub> and/or other species, ozone production is referred to as being “NO<sub>x</sub>-limited.”<sup>8</sup> In this situation, ozone concentrations are most effectively reduced by lowering NO<sub>x</sub> emissions, rather than lowering emissions of VOCs. When the abundance of OH and other radicals is limited either through low production or reactions with NO<sub>x</sub> and other species, ozone production is sometimes called “VOC-limited” or “NO<sub>x</sub>-saturated” and ozone is most effectively reduced by lowering VOCs. However, even in NO<sub>x</sub>-saturated conditions, very large decreases in NO<sub>x</sub> emissions can cause the ozone formation regime to become NO<sub>x</sub>-limited. Consequently, reductions in NO<sub>x</sub> emissions (when large), can make further emissions reductions more effective at reducing ozone. Between the NO<sub>x</sub>-limited and NO<sub>x</sub>-saturated extremes there is a transitional region, where ozone is less sensitive to marginal changes in either NO<sub>x</sub> or VOCs. In rural areas and downwind of urban areas, ozone production is generally NO<sub>x</sub>-limited. However, across urban areas with high populations, conditions may vary.

CAA section 182(c)(2)(C) requires serious and above ozone nonattainment areas to make reasonable progress in reducing VOC, and also grants the EPA discretion to define the conditions under which NO<sub>x</sub> reductions may be substituted for or combined with VOC reductions “in order to maximize the reduction in ozone air pollution” and does not further specify the conditions that represent an “equivalent” reduction in ozone. For instance, it does not require a specific concentration test at every monitor or at specific locations within an area. No such requirement appears in the CAA’s other provisions governing the RFP demonstration, which define specific percentage reductions aimed at ensuring timely attainment of the NAAQS, or in the

<sup>5</sup> VOC and NO<sub>x</sub> are also referred to as ozone precursors.

<sup>6</sup> EPA, Health Risk and Exposure Assessment (HREA) for Ozone Final Report, August 2014. Available at <https://www.epa.gov/naaqs/ozone-o3-standards-risk-and-exposure-assessments-review-completed-2015>.

<sup>7</sup> Oxides of nitrogen (NO<sub>x</sub>) can be in the form of nitric oxide (NO), nitrite (NO<sub>2</sub>), etc. Ozone (O<sub>3</sub>) is a highly reactive gas that decays to ordinary oxygen (O<sub>2</sub>). When O<sub>3</sub> reacts with NO<sub>x</sub>, the result oxidizes the NO<sub>x</sub>, *i.e.*, the molecule of oxygen (O) moves from the O<sub>3</sub> to the NO<sub>x</sub>. For example, O<sub>3</sub> + NO forms NO<sub>2</sub> + O<sub>2</sub>. This reaction can also move in the opposite direction, to form ozone.

<sup>8</sup> See EPA’s Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants, Final Report, February 2013, section 3.2.4, posted at <https://www.epa.gov/naaqs/ozone-o3-standards-integrated-science-assessments-review-completed-2015>.

<sup>1</sup> We addressed the RFP for the HGB serious ozone nonattainment area in a separate rulemaking. See 86 FR 24717 (May 10, 2021).

<sup>2</sup> The RFP submittal and our October 2020 proposal are provided in the docket for this action.

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

<sup>4</sup> The EPA’s recent final determination that the DFW Serious nonattainment area failed to attain the 2008 ozone NAAQS by the area’s attainment date is outside the scope of this action. 87 FR 60926 (October 7, 2022).

EPA's 1993 NO<sub>x</sub> Substitution Guidance, which describes a recommended procedure for states to utilize NO<sub>x</sub> substitution.<sup>9</sup> We interpret CAA section 182(c)(2)(C) and these supporting authorities as properly reflecting Congress's intent to allow NO<sub>x</sub> reductions to be considered within an RFP demonstration so long as these reductions are at least as effective as using VOC reductions in reducing ozone.

### B. Ozone Chemistry in the DFW Area

The dynamics of ozone formation in the DFW area, including the proportion of VOC to NO<sub>x</sub> ("VOC: NO<sub>x</sub> ratio"), are described in Appendix D of the DFW Serious Area Attainment Demonstration SIP Revision for the 2008 Ozone NAAQS.<sup>10</sup> Appendix D is the conceptual model for the DFW area, providing details on ozone transport, as well as trends and formation.

The highest levels of ozone typically occur north and northwest of the Dallas urban core, e.g., at the Denton Airport South and Grapevine Fairway monitors — these monitors are often downwind during the ozone season, as surface winds during this time are predominately from the south and southeast.<sup>11</sup> The Grapevine Fairway monitor, northwest of the Dallas urban core, was the "controlling" monitor in 2018 and 2020; the Dallas North monitor, north of the Dallas urban core, was the controlling monitor in 2019; and the Pilot Point monitor, north-northwest of the Dallas urban core, was the controlling monitor in 2021.<sup>12</sup> The controlling monitor is the monitor with the highest ozone design value (DV) in the nonattainment area. The DV is the annual fourth highest daily maximum 8-hour average ozone concentration and is the metric to determine compliance with the 2008 ozone NAAQS. Thus, the controlling monitor determines the ozone DV for the nonattainment area.

The DFW area is the fourth largest metropolitan area in the United States with about 7.5 million residents.<sup>13</sup>

<sup>9</sup> EPA's NO<sub>x</sub> Substitution Guidance is posted in the docket for this rulemaking and at [https://www3.epa.gov/ttn/naaqs/aqmguidance/collection/cp2\\_old/19931201\\_oaqps\\_nox\\_substitution\\_guidance.pdf](https://www3.epa.gov/ttn/naaqs/aqmguidance/collection/cp2_old/19931201_oaqps_nox_substitution_guidance.pdf).

<sup>10</sup> Henceforth referred to as "Appendix D" and posted in the docket for this action.

<sup>11</sup> A map showing the location of the 20 ozone monitors in the DFW area is posted in the docket for this action.

<sup>12</sup> The TCEQ posts the annual fourth highest daily maximum 8-hour average ozone concentrations. See [https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr\\_attainment.pl](https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr_attainment.pl).

<sup>13</sup> U.S. Census Bureau, 2020 census data for the 10 counties comprising the DFW area. See <https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html>.

Ozone precursor emissions (both NO<sub>x</sub> and VOC) in the DFW area and particularly the urban core of Dallas and Fort Worth have historically been dominated by mobile source emissions.<sup>14</sup> In recent years however, only the NO<sub>x</sub> emissions in the DFW area are dominated by mobile sources and VOC emissions are dominated by area sources.<sup>15</sup> Appendix D mentions that the highest average NO<sub>x</sub> concentrations have been measured at the Dallas Hinton Street ozone monitor, located in the Dallas urban core near several busy roadways. Monitors located to the south and southeast of Dallas County, in areas that are relatively rural, have measured the lowest NO<sub>x</sub> concentrations. NO<sub>x</sub> concentrations in the DFW area have declined since the mid-1980s and NO<sub>x</sub> concentrations at the Dallas Hinton Street monitor showed a 50 percent (%) decrease from 2003 through 2013. We believe that NO<sub>x</sub> emissions have continued to decrease since 2013, as seen in the more recent and lower emission inventories for the DFW area cited earlier (81 FR 88124 and 87 FR 56891). Appendix D mentions that reductions in NO<sub>x</sub> concentrations outside the DFW urban core are not as large as those observed close to its center, which suggests that the measured decreases may be a result of reductions in NO<sub>x</sub> emissions from mobile sources. Decreases in VOC concentration have also been measured in the DFW area but are not as dramatic as the decreases in NO<sub>x</sub> emissions.

The TCEQ uses analyses in Appendix D to conclude that monitors to the northwest and on the edges of the DFW area are transitional or NO<sub>x</sub>-limited, indicating that NO<sub>x</sub> controls would be more effective at controlling ozone in these areas. Monitors to the northwest include the Denton Airport South, Grapevine Fairway, Keller, and Eagle Mountain Lake, and monitors on the edges of the DFW area include Pilot Point, Parker County, Granbury, Cleburne Airport, Italy, Corsicana Airport, Kaufman, Rockwall Heath, and Greenville. Of these monitors, only the Grapevine Fairway, Pilot Point, and Cleburne Airport monitors had ozone DVs above 75 ppb from 2018 through 2021.

Of the 20 ozone monitors in the DFW area, 15 have ozone DVs at or below 75 ppb from 2018 through 2021 and thus, are not relevant to the discussion on NO<sub>x</sub> substitution since these monitors

are not violating the 2008 ozone NAAQS. Four of the five monitors with ozone DVs above 75 ppb (Frisco, Dallas North, Grapevine Fairway, and Pilot Point) are north and northwest (and typically downwind) from the Dallas urban core and thus, consistent with our earlier discussion on ozone chemistry and the TCEQ's analyses in Appendix D, we would expect NO<sub>x</sub> controls to be more effective than VOC controls for reducing ozone at these monitors. The fifth monitor with ozone DVs above 75 ppb is the Cleburne Airport monitor, which, as noted earlier, is on the edge of the DFW area and is south-southwest of the DFW urban core. While surface winds during the ozone season are predominately from the south and southeast, it is not unusual for surface winds to flow from the northeast (and thus, flow downwind from the DFW urban core) on days when the Cleburne Airport monitor exceeds the ozone standard.<sup>16</sup> Therefore, consistent with our earlier discussion on ozone chemistry and the TCEQ's analyses in Appendix D, we would expect NO<sub>x</sub> controls to be more effective than VOC controls for controlling ozone at this monitor, too.

A new analysis published by EPA authors looks at ozone formation regimes in 2007 and 2016 in ozone nonattainment areas, including the DFW area.<sup>17</sup> Details for DFW are included in the supplemental information of that paper which suggests that: (1) day-of-week analysis points to the DFW area as a whole being NO<sub>x</sub>-limited in 2016 but the controlling monitor being "transitional," and (2) photochemical model sensitivity analysis (*i.e.*, model predictions of how ozone will change with emissions perturbations) predicts that in 2016 all locations in the DFW area were NO<sub>x</sub>-limited on average across days with ozone levels above 70 ppb (there could be some variability among those days). The controlling monitor in 2016 was the Denton Airport South monitor, northwest of the Dallas

<sup>16</sup> See the 2014–2016 back trajectory analyses from the Cleburne Airport monitor provided in the Dallas-Fort Worth and Houston-Galveston-Brazoria Nonattainment Areas Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document, Figure 6b on page 18. Figure 6b shows winds predominantly from the northeast on days when the Cleburne Airport monitor exceeded the 2015 ozone NAAQS. This TSD is posted at <https://www.regulations.gov/document/EPA-HQ-OAR-2017-0548-0403>.

<sup>17</sup> Reference: Koplitz, S; Simon, H; Henderson, B; Liljegren, J; Tonnesen, G; Whitehill, A; and Wells, B. Changes in Ozone Chemical Sensitivity in the United States from 2007 to 2016. ACS Environ. Au 2022, 2, 206–222. See also <https://doi.org/10.1021/acsenvironau.1c00029>. This article and the supplemental information are in the docket for this action.

<sup>14</sup> For example, see the approved emission inventories at 73 FR 58475 (October 7, 2008).

<sup>15</sup> See the emission inventories approved at 79 FR 67068 (November 12, 2014), 81 FR 88124 (December 7, 2016), and 87 FR 56891 (September 16, 2022).

urban core, with an ozone DV of 80 ppb.<sup>18</sup>

An analysis of ozone and NO<sub>x</sub> for each day of the week for 1997–2013 is also provided in Appendix D. In the scientific literature, day-of-week analysis has been used to infer ozone chemical regimes.<sup>19</sup> In many urban areas, NO<sub>x</sub> concentrations decrease on weekends while VOC concentrations remain fairly constant due to shifts in heavy-duty diesel vehicle patterns throughout the week. All other conditions being equal, if ozone concentrations decrease in parallel with these lower weekend NO<sub>x</sub> values that suggests a location has NO<sub>x</sub>-limited ozone formation regime. Conversely higher weekend ozone concentrations suggest a VOC-limited ozone formation regime. The analysis presented in Appendix D finds that on Sundays, ozone and NO<sub>x</sub> concentrations were significantly lower compared to other days of the week and on Fridays, ozone and NO<sub>x</sub> concentrations were higher compared to other days of the week. Appendix D notes that the highest NO<sub>x</sub> concentrations (on Fridays) are also when traffic (on-road mobile source activity) is at its peak. Appendix D further presents site-level ozone concentrations by day-of-week and shows that the highest ozone concentrations occur mid-week at both an urban core site (Dallas Hinton Street) and at one of the controlling monitors (Grapevine Fairway) suggesting NO<sub>x</sub>-limited conditions in these locations. The analysis in Appendix D reviewed the number of days with ozone concentrations greater than 75 ppb (“high ozone days”) for each day of the week at all monitoring sites in the DFW area and found that fewer high ozone days occur on Sundays compared to other days of the week. Sunday had 85 high ozone days and Monday had the second lowest number of high ozone days—103. High ozone days occur most often on Fridays, with 137 days. While the day-of-week analysis is for years 1997–2013, NO<sub>x</sub> reductions in the DFW area since 2013 are expected to result in more NO<sub>x</sub>-limited conditions than would have been present during the period of this analysis.

From 2018 through 2021, 15 of the 20 monitors in the DFW area recorded ozone DVs at or below 75 ppb and five monitors had ozone DVs above 75 ppb: Pilot Point, Grapevine Fairway, Dallas North, Frisco, and Cleburne Airport.

The TCEQ’s analyses in Appendix D indicate that NO<sub>x</sub> controls would be more effective at controlling ozone in these monitor locations. The TCEQ’s findings here are consistent with our understanding of ozone chemistry and recent analysis of ozone formation regimes described earlier. Therefore, we find the TCEQ’s use of NO<sub>x</sub> substitution in the DFW area reasonable, especially where the DFW monitors have DVs above 75 ppb from 2018 through 2021.

## II. NO<sub>x</sub> Substitution in the TX RFP SIP for the DFW Area

As described here and in our October 2020 proposal, the DFW serious nonattainment area for the 2008 ozone NAAQS had an attainment date of July 20, 2021.<sup>20</sup> The attainment year ozone season is the ozone season immediately preceding a nonattainment area’s maximum attainment date (see 40 CFR 51.1100(h)). Therefore, pursuant to CAA section 182(c)(2) and 40 CFR 51.1110, the RFP submittal for the DFW serious nonattainment area must demonstrate emissions reductions within the nonattainment area of three percent per year from January 1, 2018, to the end of the attainment year and thus, a nine percent reduction in emissions is required from January 1, 2018, through December 31, 2020. In addition, because the State has already satisfied the 15 percent VOC emissions reduction requirement for the DFW area,<sup>21</sup> all 10 counties in the DFW Serious nonattainment area may substitute NO<sub>x</sub> reductions for VOC, consistent with the 2008 Ozone SRR (see 80 FR 12264, 12271), 40 CFR 51.1110, and EPA’s NO<sub>x</sub> Substitution Guidance.

The RFP submittal for the DFW area provides the required nine percent reductions as eight percent NO<sub>x</sub> emissions reductions and one percent VOC emissions reductions. As noted earlier, Appendix D describes the highest levels of NO<sub>x</sub> in the urban core and the highest concentrations of ozone recorded at monitors downwind of the urban core, predominantly in the north and northwest portions of the DFW area. Appendix D also describes a transitional regime in the DFW urban core and at the Eagle Mountain Lake monitor however, the monitors in the DFW urban core and the Eagle Mountain Lake monitor have ozone DVs at or below 75 ppb from 2018 through 2021 and thus, are not relevant to the discussion on NO<sub>x</sub> substitution. Appendix D also describes, consistent

with EPA’s discussion on ozone chemistry elsewhere in this action, that monitors to the north, northwest, and on the edges of the DFW area are transitional or NO<sub>x</sub>-limited. As mentioned earlier, four of the five monitors that recorded violations of the 2008 ozone NAAQS between 2018 and 2021 are north and northwest of the Dallas urban core: Pilot Point, Grapevine Fairway, Dallas North, and Frisco. The fifth monitor—the Cleburne Airport monitor—is on the south-southwest edge of the DFW area. Finally, the State’s review of ozone and NO<sub>x</sub> for each day of the week links levels of NO<sub>x</sub> with ozone levels, indicating that decreasing levels of NO<sub>x</sub> would result in decreasing levels of ozone. Because ambient NO<sub>x</sub> and ozone data indicate those areas of DFW with the highest ozone values are NO<sub>x</sub>-limited, and because there are no violating monitors in the DFW areas described as VOC-limited, we agree with Texas that reductions in NO<sub>x</sub> are at least as effective in reducing ozone as VOC reductions. In addition, based on the EPA’s analysis referenced earlier<sup>22</sup> and the TCEQ’s day-of-the-week analyses of NO<sub>x</sub> concentrations and ozone levels, we would also expect NO<sub>x</sub> reductions at the DFW urban core monitors to be at least as effective in reducing ozone as VOC reductions. Therefore, we find that the State’s use of NO<sub>x</sub> substitution is warranted and appropriately implemented, and we propose to approve the NO<sub>x</sub> substitution provided in the RFP submittal for the DFW serious nonattainment area for the 2008 ozone NAAQS.

## III. Environmental Justice Considerations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation,

<sup>18</sup> The ozone DV at the Denton Airport South monitor was at or below 75 ppb from 2018 through 2021.

<sup>19</sup> Please see the list of references provided in the docket for this action.

<sup>20</sup> See 84 FR 44238, (August 23, 2019). The EPA’s final determination that the DFW area did not meet the July 20, 2021, attainment date for the 2008 ozone NAAQS is outside the scope of this action (see 87 FR 60926).

<sup>21</sup> See 81 FR 88124 (December 7, 2016).

<sup>22</sup> Koplitz, S; Simon, H; Henderson, B; Liljegren, J; Tonnesen, G; Whitehill, A; and Wells, B. Changes in Ozone Chemical Sensitivity in the United States from 2007 to 2016. ACS Environ. Au 2022, 2, 206–222. *This article and the supplemental information are in the docket for this action.*

and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”<sup>23</sup> For this proposed action, the EPA conducted screening analyses using the EJScreen (Version 2.1) tool. We conducted the analyses for the purpose of providing information to the public, not as a basis of our proposed action. The EJScreen analysis reports are available in the docket for this rulemaking. The EPA found, based on the EJScreen analyses, that this proposed action will not have disproportionately high or adverse human health or environmental effects on communities with EJ concerns, as the RFP is an accounting of ozone precursor emission reductions throughout the 10-county DFW nonattainment area.

#### IV. Supplemental Proposed Action

The EPA is supplementing our October 2020 proposal addressing revisions to the Texas SIP to meet the RFP requirements for the DFW serious nonattainment area for the 2008 ozone NAAQS. In this supplemental proposal, we are proposing to approve the substitution of NO<sub>x</sub> emission reductions for VOC emission reductions as consistent with section 182(c)(2)(C) of the CAA. The EPA is providing an opportunity for public comment on this supplemental proposal. However, we are not reopening for comment our October 2020 proposal. The EPA will address all comments received on our October 2020 proposal and on this supplemental proposal in our final action.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: December 15, 2022.

**Earthea Nance,**

*Regional Administrator, Region 6.*

[FR Doc. 2022–27603 Filed 12–19–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2022–0681; FRL–10386–01–R9]

### Approval of Air Quality Implementation Plans; Vehicle Miles Traveled Emissions Offset Demonstrations for the 2015 Ozone Standards; California

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the California state implementation plan (SIP) concerning vehicle miles traveled (VMT) offset demonstrations for the Los Angeles—South Coast Air Basin (South Coast), Riverside County (Coachella Valley), Los Angeles—San Bernardino Counties (West Mojave Desert), and San Joaquin Valley nonattainment areas (NAAs) for the 2015 ozone national ambient air quality standards (NAAQS). The EPA is proposing to approve these revisions because they demonstrate that California has added or implemented specific enforceable transportation control strategies and transportation control measures to offset the growth in emissions from growth in VMT and vehicle trips. We are proposing to approve these revisions under the Clean Air Act (CAA or “the Act”), which establishes VMT offset demonstration requirements for ozone nonattainment areas classified as “Severe” or “Extreme.”

**DATES:** Written comments must arrive on or before January 19, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0681 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary

<sup>23</sup> See <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.