

vessels must comply with lawful instructions of the Fifth Coast Guard District Commander or designated representative via VHF-FM channel 16 or by phone at 757-398-6391 (Fifth Coast Guard District Command Center).

(e) *Effective and enforcement periods.* This section will be in effect from May 1, 2024, through 11:59 p.m. on May 1, 2027. Individual safety zones designated in the table in subparagraph (a) will only be subject to enforcement, however, during active construction or other circumstances which may create a hazard to navigation as determined by the Fifth Coast Guard District Commander. The Fifth Coast Guard District Commander will provide notification of the exact dates and times each safety zone is subject to enforcement in advance of each enforcement period for each of the locations listed above, in paragraph (a) of this section. Notifications will be made to the local maritime community through the Local Notice to Mariners and the Coast Guard will issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) as soon as practicable in response to an emergency. If the entire project is completed before May 1, 2027, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. The Fifth Coast Guard District Local Notice to Mariners can be found at: <https://www.navcen.uscg.gov>.

Dated: January 22, 2024.

**S.N. Gilreath,**

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R06-OAR-2023-0536; FRL-11640-01-R6]

### Clean Air Act Reclassification of the San Antonio, Dallas-Fort Worth, and Houston-Galveston Brazoria Ozone Nonattainment Areas; TX

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to grant a request from the Governor of Texas to reclassify the San Antonio, Dallas-Fort Worth (DFW), and Houston-Galveston Brazoria (HGB) ozone

nonattainment areas from Moderate to Serious for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The EPA is also herein outlining its interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing the following requirements related to the prior reclassification level for an ozone nonattainment area: a demonstration of attainment by the prior attainment date; a Reasonably Available Control Measures (RACM) analysis tied to the prior attainment date; and contingency measures specifically related to the area's failure to attain by the prior attainment date. The EPA is also proposing deadlines for the Texas Commission on Environmental Quality (TCEQ or State) to submit revisions to the State Implementation Plan (SIP) addressing the Serious area requirements and for the first transportation control demonstrations for these areas. The EPA is also proposing deadlines for implementation of new Reasonably Available Control Technology (RACT) rules and for any new or revised Enhanced vehicle Inspection and Maintenance (I/M) programs.

**DATES:** Written comments should be received on or before February 26, 2024.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2023-0536, at <https://www.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 submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. 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](https://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:** Ms. Carrie Paige, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov). The EPA 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 wherever “we” or “our” is used, we mean the EPA.

### I. EPA's Proposed Action

The EPA is proposing to grant a request submitted by Texas Governor Greg Abbott to reclassify the San Antonio, DFW, and HGB ozone nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS. The EPA is also herein outlining its interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing the following requirements related to the prior reclassification level for an ozone nonattainment area: (1) a demonstration of attainment by the prior attainment date, (2) a RACM analysis tied to the prior attainment date, and (3) contingency measures specifically related to the area's failure to attain by the prior attainment date. Accordingly, if EPA were to finalize its reclassification of the San Antonio, DFW, and HGB areas to Serious for the 2015 ozone NAAQS, Texas would no longer be required to submit these three identified SIP elements as they relate to the Moderate classification level, and EPA's October 18, 2023, Finding of Failure to Submit<sup>1</sup> would be mooted as to these specific SIP elements.

The EPA is also proposing a deadline for the TCEQ to submit revisions to the SIP addressing the Serious area requirements for these areas; specifically, the EPA is proposing and taking comment on a range of deadlines, from 12 to 18 months from the effective date of the EPA's final rule reclassifying the San Antonio, DFW, and HGB areas as Serious, for the TCEQ to submit the revised SIPs addressing the Serious area requirements for these nonattainment areas. The EPA is also proposing a deadline for implementation of new RACT rules as expeditiously as practicable but no later than January 1,

<sup>1</sup> 88 FR 71757, (October 18, 2023). Henceforth referred to as the “October 2023 findings.”

2026. Additionally, the EPA is proposing a deadline for any new or revised Enhanced vehicle I/M programs to be fully implemented as expeditiously as practicable but no later than four years after the effective date of EPA's final rule reclassifying these areas as Serious. Lastly, the EPA is proposing a deadline for the first transportation control demonstration, as required by CAA section 182(c)(5), to be submitted two years after the attainment demonstration due date.

## II. Background

On October 1, 2015, the EPA strengthened the primary and secondary eight-hour ozone NAAQS from 0.075 parts per million (ppm) to 0.070 ppm ("2015 ozone NAAQS").<sup>2</sup> In accordance with CAA section 107(d), the EPA must designate an area "nonattainment" if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. With respect to the ozone NAAQS, the EPA further classifies nonattainment areas as Marginal, Moderate, Serious, Severe, or Extreme, depending upon the ozone design value (DV) for the area.<sup>3</sup> See CAA section 181(a)(1). As a general matter, higher classified ozone nonattainment areas are subject to a greater number of, and more stringent, CAA planning requirements than lower classified areas and are allowed more time to attain the ozone NAAQS. See, generally, subpart 2 of part D of title I of the CAA.

Effective August 3, 2018, the EPA designated and classified the DFW and HGB areas under the CAA as Marginal nonattainment for the 2015 ozone NAAQS.<sup>4</sup> Effective September 24, 2018, the EPA designated and classified the San Antonio area under the CAA as Marginal nonattainment for the 2015 ozone NAAQS.<sup>5</sup> The EPA's classification of the San Antonio, DFW, and HGB ozone nonattainment areas as Marginal established a requirement that

these areas attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than three years from the effective date of designation, *i.e.*, August 3, 2021, for the DFW and HGB areas and September 24, 2021, for the San Antonio area. Consistent with CAA section 181(b)(2), the EPA is required to determine whether an area attained the ozone NAAQS by the applicable attainment date.

In October 2022, the EPA determined that the DFW and HGB areas failed to attain the 2015 ozone NAAQS by the August 3, 2021, attainment date and reclassified these areas as Moderate for the 2015 ozone NAAQS with an attainment date of August 3, 2024. In that same action, the EPA also determined that the San Antonio area failed to attain the 2015 ozone NAAQS by the September 24, 2021, attainment date and reclassified the area as Moderate for the 2015 ozone NAAQS with an attainment date of September 24, 2024 (see 87 FR 60897, October 7, 2022).

On October 13, 2023, the EPA signed a finding that 11 states failed to submit SIP revisions required by the CAA in a timely manner for certain nonattainment areas reclassified as Moderate for the 2015 ozone NAAQS.<sup>6</sup> This final action was effective on November 17, 2023, and triggered certain CAA deadlines for the imposition of sanctions if a state does not submit a complete SIP addressing the outstanding requirements and for the EPA to promulgate a Federal Implementation Plan (FIP) if the EPA does not approve the state's SIP revision addressing the outstanding requirements.<sup>7</sup>

Texas is included in the October 2023 findings for failing to submit required SIP revisions for the San Antonio, DFW, and HGB areas. The required Moderate area SIP elements that the TCEQ failed to submit include Nonattainment New Source Review (NNSR), Reasonable Further Progress (RFP), the attainment

demonstration, RACM, RACT, contingency measures, and Basic I/M.<sup>8</sup>

## III. Voluntary Reclassification of the San Antonio, DFW, and HGB Areas as Serious Ozone Nonattainment

On October 12, 2023, Texas Governor Greg Abbott submitted a request to the EPA Administrator to reclassify the San Antonio, DFW, and HGB ozone nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS.<sup>9</sup> A Serious classification is one category higher than the current classification of Moderate. If these areas are classified as Serious, the DFW and HGB areas must attain the 2015 ozone NAAQS no later than August 3, 2027, and the San Antonio area must attain the 2015 ozone NAAQS no later than September 24, 2027.

CAA section 181(b)(3) provides for "voluntary reclassification" and states that "[t]he Administrator shall grant the request of any state to reclassify a nonattainment area in that State . . . to a higher classification. The Administrator shall publish a notice in the **Federal Register** of any such request and of action by the Administrator granting the request." The EPA herein is providing such notice of the request and is proposing to grant the request from Texas. The EPA reads the relevant statutory language to provide no discretion to deny the request made in this instance.

## IV. Consequences of Reclassification

### A. Permitting for Stationary Air Pollution Sources

Upon reclassification, stationary air pollution sources in the San Antonio, DFW, and HGB ozone nonattainment areas will be subject to Serious ozone nonattainment area New Source Review (NSR) and Title V permit requirements. The source applicability thresholds for major sources and major source modification emissions will be 50 tons per year (tpy) for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>). For new and modified major stationary sources subject to review under Texas Administrative Code Title 30, Chapter 116, Section 116.150 (30 TAC 116.150) in the EPA approved SIP,<sup>10</sup> VOC and NO<sub>x</sub> emission increases from the proposed construction of the

<sup>2</sup> 80 FR 65292 (October 26, 2015).

<sup>3</sup> For the 2015 ozone NAAQS, the DV at each monitoring site is the annual fourth-highest daily maximum 8-hour average ozone concentration, averaged over three consecutive years. For areas with more than one monitoring site, the highest DV among the monitoring sites is the DV for such areas.

<sup>4</sup> 83 FR 25776 (June 4, 2018). The DFW nonattainment area for the 2015 ozone NAAQS includes nine counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, and Wise. The HGB nonattainment area for the 2015 ozone NAAQS includes six counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery.

<sup>5</sup> 83 FR 35136 (July 25, 2018). The San Antonio nonattainment area includes all of Bexar County and is referred to as the "Bexar County nonattainment area" in the reclassification request from the Governor of Texas, discussed in Section II of this proposal.

<sup>6</sup> 88 FR 71757, (October 18, 2023).

<sup>7</sup> If the EPA has not affirmatively determined that a state has made the required complete SIP submittal for an area within 18 months of the effective date of finding, then the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area (CAA section 179(a) and (b) and 40 CFR 52.31). If the EPA has not affirmatively determined that a state has made the required complete SIP submittal within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area (CAA section 179(b)(1) and 40 CFR 52.31). The EPA must promulgate a FIP no later than 2 years after issuance of the FFTS if an affected state has not submitted, and the EPA has not approved, the required SIP submittal.

<sup>8</sup> See the FFTS for more detail—the FFTS is also posted in the docket for this action.

<sup>9</sup> The submitted request is posted in the docket for this action.

<sup>10</sup> Specifically, we are referring to the EPA-approved Texas SIP at Section 116.150, titled "New Major Source or Major Modification in Ozone Nonattainment Area." 60 FR 49781 (September 27, 1995) and subsequent revisions at 77 FR 65119 (October 25, 2012).

new or modified major stationary sources must be offset by emission reductions by a minimum offset ratio of 1.20 to 1 (see CAA section 182(c)(10)). We note that the DFW and HGB areas are classified as Severe under the 2008 ozone NAAQS and thus, the more stringent Severe area requirements are currently being implemented in those areas.<sup>11</sup>

### *B. Status of Certain Requirements of Previous Classification*

EPA interprets the ozone nonattainment requirements of the CAA to provide that when an ozone nonattainment area is reclassified, the attainment date for the prior classification is superseded by the attainment date for the new classification. Thus, once a nonattainment area has been reclassified and as a result has a new statutory attainment deadline, certain SIP elements (in this action, the attainment demonstration, RACM, and contingency measures for failure to attain) which are tied to the applicable attainment deadline are no longer required for the lower, superseded classification. Requiring a state to submit or EPA to act on such SIP elements would make no logical or practical sense. Generally, after EPA has determined that an area has failed to attain by its applicable attainment date, the area is reclassified. Consequently, that former, superseded classification's attainment date is in the past and is no longer applicable, and it is no longer meaningful to evaluate whether a plan demonstrates that an area would attain by that superseded date. At that point in time, no changes could be made to the attainment demonstration that would change facts that have already come to pass, *i.e.*, that the area has failed to attain by its applicable attainment date.<sup>12</sup> This reasoning also applies in the case of RACM, which for ozone is submitted with the attainment demonstration demonstrating that an area has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable.<sup>13</sup> EPA has long evaluated

RACM in terms of whether there are any reasonably available control measures that could advance an area's attainment date. In the situation discussed herein, the attainment date is in the past, so it is not possible to conduct an evaluation as to whether attainment could be advanced. Accordingly, EPA interprets the CAA such that following reclassification, any required attainment demonstration and associated RACM analysis must be done with respect to the new and current applicable attainment date.

The same logic applies for voluntary reclassifications. Section 181(b)(3) of the CAA clearly authorizes states to request reclassification for an ozone nonattainment area, as Texas did here. The effect of EPA's grant of such a request would be to reclassify the area and establish a new attainment date for the higher classification, which would replace the old attainment date associated with the area's former, superseded classification. A voluntary reclassification to a higher classification could occur before the lower classification's attainment date but would still establish a new attainment date. Thus, voluntary reclassification would still render inapplicable those requirements specifically tied to the lower classification's attainment date, which would no longer be applicable. The CAA does not require attainment demonstrations (and associated RACM analysis) for attainment dates associated with classifications that are not applicable to the area. Moreover, following voluntary reclassification from Moderate to Serious before the Moderate attainment date, the EPA is no longer required to determine whether the area attained by the no longer applicable Moderate attainment date. Because the EPA would not issue such a finding of failure to attain, contingency measures for failure to attain by the Moderate attainment date no longer have logical significance.<sup>14</sup> Therefore, the EPA proposes that if this reclassification takes effect, the following Moderate area SIP requirements would no longer be required: (1) an attainment demonstration with respect to the Moderate attainment date, (2) a RACM analysis with respect to the Moderate attainment date, and (3) contingency measures for failure to attain by the Moderate attainment date. Texas must submit these SIP elements for the Serious classification according to the

deadlines established elsewhere in this proposal. Accordingly, the EPA is proposing to determine that the October 2023 findings that EPA published with respect to SIP revisions for these three identified elements for the Moderate classification are now moot, and that the associated deadlines triggered by the October 2023 findings for imposition of sanctions or promulgation of a FIP no longer apply with respect to these three identified elements.<sup>15</sup>

Note, however, that there remain several Moderate area SIP requirements that continue to be required after these areas are reclassified to Serious. They are unaffected because their meaning is not dependent upon the attainment date itself. These are: (1) a 15 percent rate-of-progress (ROP) plan (40 CFR 51.1310), (2) contingency measures for failure to achieve RFP, including the 15 percent rate-of-progress (ROP) requirement for Moderate areas (CAA sections 172(c)(9) and 182(c)(9)),<sup>16</sup> (3) a RACT demonstration (40 CFR 51.1312), (4) NNSR rules (40 CFR 51.165), and (5) a Basic I/M program (CAA section 182(b)(4) and 40 CFR 51 subpart S). Reclassification does not change the submission requirement or implementation deadlines for these SIP elements that were due for the Moderate classification for the San Antonio, DFW, and HGB areas. Changing the submission requirement or implementation deadlines for these elements would delay the implementation of these measures beyond what the CAA intended. While the CAA does provide for later attainment dates for higher classifications, it does not authorize altering requirements that came due as a result of the lower classifications aside from the very particular situation outlined for requirements that are directly dependent on the attainment date. For example, the CAA requirement in section 182(b)(2) to implement RACT for specified categories of sources is implemented and assessed based on whether the RACT rules are implementing what is economically and technologically feasible. In other words, this analysis of whether controls comprise RACT is done irrespective of the attainment deadline. There is nothing in the CAA to suggest that reclassification as Serious, and the associated change in an area's attainment date, should alter the preexisting requirement to submit a SIP

<sup>11</sup> For Severe ozone nonattainment areas, the nonattainment NSR source applicability thresholds for major sources and major source modification emissions are 25 tpy for VOC and NO<sub>x</sub>, and the minimum emissions offset ratio is 1.30 to 1 (see CAA sections 182(d) and 182(d)(2)).

<sup>12</sup> See 42 U.S.C. 7511a(c)(2)(A). As required by the CAA, a state must submit "[a] demonstration that the plan, as revised, will provide for attainment of the ozone [NAAQS] by the applicable attainment date." [emphasis added]

<sup>13</sup> See 40 CFR 51.1312(c). See *Sierra Club v. EPA*, No. 01–1070 (D.C. Cir. 2002) (holding that the "RACM requirement is to be understood as a means of meeting the deadline for attainment").

<sup>14</sup> Contingency measures for failure to meet RFP by the Moderate attainment date would continue to be required after voluntary reclassification from Moderate to Serious.

<sup>15</sup> 88 FR 71757.

<sup>16</sup> If a state demonstrates that ROP has been met for an area, the EPA believes that the requirement for contingency measures for that purpose could similarly be mooted.

implementing RACT level controls and the deadline to implement those controls.<sup>17</sup> This same logic applies to all the identified requirements not specifically tied to the attainment date, and the associated deadlines for imposition of sanctions and EPA's obligation to promulgate a FIP triggered by the October 2023 findings would continue to apply with respect to these elements.

### C. Required Plans, and Submission and Implementation Deadlines

#### 1. Serious Area Plan Requirements

The SIP requirements that apply specifically to Serious areas are listed under CAA section 182(c) and include: Enhanced monitoring (CAA section 182(c)(1)); Emissions inventory and emissions statement rule (40 CFR 51.1300(p) and 40 CFR 51.1315); RFP (40 CFR 51.1310); Attainment demonstration and RACM (40 CFR 51.1308 and 40 CFR 51.1312(c)); RACT (40 CFR 51.1312); Nonattainment NSR (40 CFR 51.1314 and 40 CFR 51.165); Enhanced I/M (CAA section 182(c)(3) and 40 CFR 51 Subpart S); Clean-fuel vehicle programs (CAA section 182(c)(4));<sup>18</sup> and Contingency measures (CAA sections 172(c)(9) and 182(c)(9)). In addition, a demonstration evaluating the need for a transportation control measure program (CAA section 182(c)(5)) is also required. Note that the analysis addressing RACT level controls for major sources should include an evaluation of controls for sources emitting 50 tpy or more that are currently reasonably available, consistent with the definition of "major source" or "major stationary source" for areas classified as Serious.<sup>19</sup> The RACT analysis should also include an evaluation of any newly-identified VOC sources covered by an EPA Control Techniques Guideline, and an evaluation of controls for VOC and NO<sub>x</sub> sources emitting 100 tpy or more that may have become reasonably available since the January 1, 2023, Moderate area

<sup>17</sup> EPA notes that reclassification does obligate the state to conduct an additional RACT analysis for the new classification. This does not relieve the obligation for the prior classification. A state may be able to consider the results of its overdue Moderate RACT analysis in preparing its Serious area RACT submittal.

<sup>18</sup> In June 2022, the EPA released new guidance that provides several options for states to either continue to rely upon their existing Clean Fuel Fleets Program, to add new components to these programs, or to rely on recent EPA regulations to satisfy the Clean Fuel Fleets requirement. This new guidance reaffirms and supplements the 1998 guidance with new compliance options. This guidance is posted at <https://www.epa.gov/state-and-local-transportation/clean-fuel-fleets-program-guidance>.

<sup>19</sup> See CAA section 182(c).

deadline for adopting and implementing RACT.

Consistent with the I/M regulations, for the existing I/M programs in the DFW and HGB areas, the State would need to conduct and submit a performance standard<sup>20</sup> modeling (PSM) analysis<sup>21</sup> as well as make any necessary program revisions as part of the Serious area I/M SIP submissions to ensure that I/M programs are operating at or above the Enhanced I/M performance standard level for the 2015 ozone NAAQS.<sup>22</sup> The State may determine through the PSM analysis that an existing SIP-approved program would meet the Enhanced performance standard for purposes of the 2015 ozone NAAQS without modification. In this case, the State could submit an I/M SIP revision with the associated performance modeling and a written statement certifying their determination in lieu of submitting new revised regulations.<sup>23</sup> With the passage of time and changes in fleet mix, it is appropriate for the State to confirm existing programs' compliance with the performance standard.

The State included PSM for the existing (Enhanced) I/M program in Appendix C of the SIP revisions, proposed by the State on May 31, 2023, for the DFW and HGB attainment demonstrations, and included PSM as an attachment to the I/M SIP revision, proposed by the State on May 31, 2023, for the San Antonio nonattainment area, to demonstrate that PSM is met for Basic I/M in that area.<sup>24</sup> The EPA will address these SIP revisions in a separate future action after the State has finalized these proposed SIP revisions and submitted them to the EPA for consideration.

<sup>20</sup> An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC, and NO<sub>x</sub>.

<sup>21</sup> See *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* (October 2022, EPA-420-B-22-034) at <https://nepis.epa.gov/Exec/ZyPDF.cgi?Dockey=P1015S5C.pdf>.

<sup>22</sup> 40 CFR 51.372(a)(2).

<sup>23</sup> See *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements*, 83 FR 62998, 63001-63002 (December 6, 2018). Performance standard modeling is also required for Enhanced I/M programs in Serious and above ozone nonattainment areas for the 2015 ozone NAAQS.

<sup>24</sup> The DFW proposed SIP revision is identified as Project No. 2022-021-SIP-NR, the HGB proposed SIP revision is identified as Project No. 2022-022-SIP-NR, and the proposed I/M SIP revision for the San Antonio nonattainment area is identified as 2022-027-SIP-NR. The Texas proposed SIP revisions are posted at <https://www.tceq.texas.gov/airquality/sip/Hottop.html>.

However, following reclassification as Serious, as outlined above for existing I/M programs, the State will need to make any necessary revisions to the proposed San Antonio Basic I/M program and submit a PSM analysis along with a written certification as part of the Serious area SIP submissions to demonstrate that the San Antonio area I/M program will be operating at or above the Enhanced I/M performance standard level for the 2015 ozone NAAQS when the Enhanced I/M program is implemented. The Enhanced I/M program requirements are to be fully implemented as expeditiously as practicable but no later than the implementation deadline determined by the final action reclassifying these areas as discussed in Section III.C.4. of this proposal.

In addition, CAA section 182(c)(5) requires that ozone nonattainment areas classified as Serious submit a demonstration of whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for an area's demonstration of attainment. If the demonstration shows that these transportation parameters will result in an exceedance of the projected emissions in the attainment demonstration, the State would be required to develop and submit a SIP revision within 18 months that includes transportation control measures to reduce emissions to levels consistent with the attainment demonstration.

#### 2. Submission Deadline for the San Antonio, DFW, and HGB Serious Area SIPs for the 2015 Ozone NAAQS

The SIP submission deadlines for nonattainment areas initially classified as Serious for the 2015 ozone NAAQS have passed and thus, the EPA is proposing new SIP submission deadlines for the reclassified Texas areas.<sup>25</sup> In proposing these new deadlines, EPA is considering the statutory guidance provided in CAA section 182(i), which allows the Administrator to adjust applicable deadlines other than attainment dates for areas that are reclassified as a result

<sup>25</sup> CAA section 182(i) specifically provides authority to EPA to adjust applicable deadlines, other than attainment dates, for areas that are reclassified as a result of failure to attain under CAA section 182(b)(2), to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions. The provision does not specifically reference areas that are voluntarily reclassified under CAA section 181(b)(3); EPA is therefore reasonably proposing to adjust deadlines for such areas under its general rulemaking authority in CAA section 301(a), consistent with CAA section 182(i).

of failure to attain, “to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” EPA’s proposed deadlines are also informed by the amount of time and balance of considerations, including an area’s attainment date, that the CAA prescribes when new implementation plans are required to be submitted. *See, e.g.*, CAA section 110(k)(5) (allowing EPA to “establish reasonable deadlines (not to exceed 18 months)” after notification that a SIP is inadequate); CAA section 179(d) (requiring states to submit a new SIP revision demonstrating attainment within one year of a finding that a nonattainment area has failed to attain by its attainment date). EPA also considered the time necessary for the State to adopt revisions to necessary attainment strategies, address other SIP requirements, and complete the public notice process necessary to adopt and submit timely SIP revisions. Given the Serious area attainment year of 2026 and the Serious area attainment dates in 2027, we are proposing and taking comment on a range of SIP submission deadlines from 12 to 18 months from the effective date of the EPA’s final action reclassifying the San Antonio, DFW, and HGB areas as Serious. Twelve months is consistent with submission deadlines set forth in prior mandatory reclassifications for the DFW area, *i.e.*, 12 months from the effective date of reclassification.<sup>26</sup> This shorter deadline would also provide for additional time for adopted control measures to influence an area’s air quality and 2024–2026 attainment DV and aid in these areas’ ability to attain by the Serious attainment deadline. Given the anticipated timing of these area reclassifications, an 18-month SIP submission deadline could also be reasonable, falling before the beginning of the Serious area attainment year (January 1, 2026) and increasing the State’s available time for assessing, adopting, and implementing emission reduction measures such that these areas can meet the ozone NAAQS expeditiously. Therefore, we are proposing and taking comment on a range of deadlines, from 12 to 18 months from the effective date of reclassification, for submission of the revised SIPs for the San Antonio, DFW, and HGB Serious nonattainment areas. We request that comments on the deadline for submission of the revised SIPs be accompanied by justification for the commenter’s position. We will

<sup>26</sup> See reclassification final actions for the DFW area at 75 FR 79302 (December 20, 2010) and 63 FR 8128 (February 18, 1998).

review comments received during the comment period and determine the appropriate SIP submission deadline in our final action for these Serious area submission requirements.

### 3. Implementation Deadline for RACT

With respect to implementation deadlines, the EPA’s implementing regulations for the 2015 ozone NAAQS require that, for RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area’s new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification (see 40 CFR 51.1312(a)(3)(ii)). The modeling and attainment demonstration requirements for 2015 ozone NAAQS areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per 40 CFR 51.1312 (see 40 CFR 51.1308(d)).

In the case of the potential reclassified Serious areas addressed in this proposal, the start of the ozone season varies among the areas—January for the HGB area and March for the DFW and San Antonio areas (see 40 CFR part 58, appendix D, section 4.1, Table D–3).<sup>27</sup> Per 40 CFR 51.1312(a)(3)(ii), and consistent with CAA section 182(i)’s provision that EPA may adjust deadlines for mandatorily reclassified areas as necessary and appropriate “to assure consistency among the required submissions” the EPA is proposing a consistent single RACT implementation deadline for all the areas addressed in this proposal, that RACT be implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.*, January 1, 2026. This proposed deadline would require implementation of RACT as early as possible in the attainment year to influence an area’s air quality and 2024–2026 attainment DV.

The EPA requests comment on its proposed deadline that RACT be implemented as expeditiously as practicable but no later than the

<sup>27</sup> Air Quality Control Region (AQCR) 215 includes the DFW area, AQCR 216 includes the HGB area, and AQCR 217 includes the San Antonio area. See also 62 FR 30270 (June 3, 1997) and 40 CFR subpart B.

beginning of the applicable attainment year, *i.e.*, January 1, 2026.

### 4. Implementation Deadline for Enhanced I/M Programs

With respect to the implementation deadline for Enhanced I/M programs, if the State intends to rely upon emission reductions from its newly required Enhanced I/M programs for the 2015 ozone NAAQS, the State would need to have such Enhanced programs fully implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.*, January 1, 2026. However, given the unique nature of I/M programs, there are many challenges, tasks, and milestones that must be met in establishing and implementing an Enhanced I/M program. The EPA realizes that implementing a new or revised I/M program on an accelerated timeline may be difficult to achieve in practice so, if the State does not intend to rely upon emission reductions from its Enhanced I/M programs in SIPs demonstrating attainment or RFP, we are proposing to allow any new or revised Enhanced I/M programs to be fully implemented no later than 4 years after the effective date of reclassification, explained as follows.

Under CAA section 182(i), reclassified areas are generally required to meet the requirements associated with their new classification “according to the schedules prescribed in connection with such requirements.” The I/M regulations provide such a prescribed schedule in stating that newly required I/M programs are to be implemented as expeditiously as practicable. The I/M regulations also allow areas newly required to implement Enhanced I/M up to “4 years after the effective date of designation and classification” to fully implement the I/M program.<sup>28</sup> With the effective date of this action expected to be in 2024, the implementation deadline for Enhanced I/M programs for the 2015 ozone NAAQS under the proposal would be in 2028. This proposed implementation deadline is beyond the Serious area attainment date of August

<sup>28</sup> The I/M program implementation deadline at 40 CFR 51.373(d) states: “For areas newly required to implement Enhanced I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.” A start date for I/M programs of 4 years after the effective date of designation and classification under the 8-hour ozone standard is also cited in the Enhanced I/M performance standard at 40 CFR 51.351(c) and (i)(2).

3, 2027 (or September 24, 2027, for the San Antonio area). However, by proposing such a deadline for newly reclassified Serious areas required to implement an Enhanced I/M program (but not needing I/M emission reductions for attainment or RFP SIP purposes), the EPA maintains that these newly required Enhanced I/M programs could reasonably be implemented after the attainment year ozone season (*i.e.*, after 2026) relevant to the Serious area attainment date if reductions from these Enhanced I/M programs are not necessary for an area to achieve timely attainment of the 2015 ozone NAAQS. The EPA has long taken the position that the statutory requirement for states to implement I/M in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas.<sup>29</sup> Considering the numerous challenges and milestones necessary in implementing an Enhanced I/M program, this proposed implementation deadline of up to 4 years is reasonable.

This proposed implementation deadline for Enhanced I/M implementation does not extend the deadline for implementation of the San Antonio area's Basic I/M program (November 7, 2026), which is still required from the area's prior classification as Moderate.<sup>30</sup>

The EPA requests comment on requiring that any new or revised Enhanced I/M programs be fully implemented as expeditiously as practicable but no later than four years after the effective date of reclassification. If the State intends to rely upon emission reductions from its newly required Enhanced I/M programs for the 2015 ozone NAAQS, the State would need to have such Enhanced programs fully implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.*, January 1, 2026.

#### 5. Reporting Deadline for the Transportation Control Demonstration

In Serious ozone nonattainment areas, CAA section 182(c)(5) requires the state to submit, six years after November 15, 1990, and every three years thereafter, a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's

demonstration of attainment. Six years after November 15, 1990, was two years after the statutory deadline established to submit attainment demonstrations. To be consistent with this CAA schedule, we are proposing that the first transportation control demonstration be required to be submitted two years after the attainment demonstrations for these areas are due, and every three years thereafter.

#### V. Proposed Action

Pursuant to CAA section 181(b)(3), we are proposing to grant the Texas Governor's request to reclassify the San Antonio, DFW, and HGB nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS. The EPA is also proposing to set a deadline for the submission of revised SIPs addressing the Serious area requirements for the San Antonio, DFW, and HGB ozone nonattainment areas. We are proposing to establish a deadline within the range of 12 to 18 months from the effective date of the final action reclassifying the San Antonio, DFW, and HGB areas as Serious for the TCEQ to submit SIP revisions addressing the CAA Serious ozone nonattainment area requirements. We are also proposing a deadline for implementation of new RACT controls as expeditiously as practicable but no later than January 1, 2026. Also, if the State does not intend to rely upon emission reductions from its Enhanced I/M programs in SIPs demonstrating attainment or RFP, we are proposing a deadline for any new or revised Enhanced I/M programs to be fully implemented as expeditiously as practicable but no later than four years after the effective date of the final action reclassifying these areas as Serious for the 2015 ozone NAAQS. We are also proposing a deadline for the first transportation control demonstration, as required by CAA section 182(c)(5), to be submitted two years after the attainment demonstration due date, and every three years thereafter.

#### VI. Environmental Justice Considerations

For this proposed action, the EPA conducted screening analyses using the EPA's Environmental Justice (EJ) screening tool (EJScreen tool, version 2.2).<sup>31</sup> The EPA reviewed environmental and demographic data of the populations living within the San Antonio, DFW, and HGB areas. The EPA then compared these data to the national average for each of the environmental and demographic groups. The results of this analysis are being

provided for informational and transparency purposes.

Review of the environmental analyses indicate that Collin, Dallas, Denton, and Tarrant counties in the DFW area and all six counties in the HGB area are above the 80th percentile for ozone. Review of the demographic analyses indicate that Chambers, Galveston, and Harris counties in the HGB area are above the 80th percentile for limited English-speaking households. A detailed description of the EJ considerations and the EJScreen analysis reports are available in the docket for this rulemaking.

#### VII. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review*

This proposed action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review. Because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, the timing of the submittal of the Serious area requirements does not impose a materially adverse impact under Executive Order 12866.

#### *B. Paperwork Reduction Act (PRA)*

This proposed action does not impose an information collection burden under the provisions of the PRA.

#### *C. Regulatory Flexibility Act (RFA)*

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action will not impose any requirements on small entities, because the EPA is seeking comment only on the timing of submittal requirements.

#### *D. Unfunded Mandates Reform Act of 1995 (UMRA)*

This proposed action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed action imposes no new enforceable duty on any State, local or Tribal governments or the private sector.

#### *E. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. It will not have

<sup>29</sup> See John S. Seitz, Memo, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995, at 4.

<sup>30</sup> See 87 FR 60897, October 7, 2022, at 60900.

<sup>31</sup> See <https://www.epa.gov/ejscreen>.

substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed action does not have Tribal implications as specified in Executive Order 13175. There are no Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the San Antonio, DFW, or HGB ozone nonattainment areas. Therefore, this proposed action 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.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This proposed action is not subject to Executive Order 13045 because the EPA is seeking comment only on the timing of submittal requirements and as such, does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This proposed action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This proposed action does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All*

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, 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.”

This proposed action would reclassify the San Antonio, DFW, and HGB nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS, set deadlines for the submission of revised SIPs addressing the Serious area requirements for these three ozone nonattainment areas, and set deadlines for implementation of controls required for these three nonattainment areas. This proposal does not revise measures in the current SIP. As such, at a minimum, this action would not worsen any existing air quality and is expected to ensure the areas are meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people. The EPA performed an environmental justice analysis, as described earlier in this action under “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this proposal to the public, not as a basis of the action.

*K. Judicial Review*

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a

determination.” For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion to decide whether to invoke the exception in (ii).

This proposal, if finalized, would be locally applicable because it would apply only to three nonattainment areas located in the State of Texas. However, if the Administrator finalizes this proposed rulemaking, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1). This proposed action, if finalized, would be based on EPA’s determination as a matter of law that upon reclassification of a nonattainment areas for the 2015 ozone NAAQS, certain nonattainment area planning requirements that are tied to the lower, superseded classification’s attainment date for these NAAQS (*i.e.*, for this action, the Moderate area attainment demonstration, Moderate area RACM demonstration, and contingency measures for failure to attain) are no longer required. This is a determination of nationwide scope or effect because it reflects EPA’s nationwide approach to implementing the CAA’s mandates concerning the consequences, in all states, of reclassification from Moderate to Serious under subpart 2 of title I, part D of the CAA. For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1).

**List of Subjects in 40 CFR Part 81**

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

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

Dated: January 19, 2024.

**Earthea Nance,**

*Regional Administrator, Region 6.*

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