

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court. Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s) nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter.

[Name of Futures Commission Merchant]

By:
Name:
Title:

ACKNOWLEDGED AND AGREED:
[Name of Depository]

By:
Name:
Title:
DATE:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

7. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

7. In § 140.91, redesignate paragraphs (a)(7) and (a)(8) as paragraphs (a)(8) and (a)(11) respectively; add new paragraphs (a)(7), (a)(9), and (a)(10); and revise newly designated paragraph (a)(11) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) * * *

(7) All functions reserved to the Commission in § 1.20 of this chapter.
* * * * *

(9) All functions reserved to the Commission in § 1.26 of this chapter.

(10) All functions reserved to the Commission in § 30.7 of this chapter.

(11) All functions reserved to the Commission in § 41.41 of this chapter. Any action taken pursuant to the delegation of authority under this paragraph (a)(11) shall be made with the concurrence of the General Counsel or, in his or her absence, a Deputy General Counsel.
* * * * *

Issued in Washington, DC, on August 3, 2010, by the Commission.

David A. Stawick,
Secretary of the Commission.

[FR Doc. 2010-19553 Filed 8-6-10; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R06-OAR-2010-0412; FRL-9186-1]

Determination of Nonattainment and Reclassification of the Dallas/Fort Worth 1997 8-hour Ozone Nonattainment Area; TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Dallas/Fort Worth (DFW) moderate 8-hour ozone nonattainment area did not attain the 1997 8-hour ozone national ambient air quality standard (NAAQS or standard) by June 15, 2010, the attainment deadline set forth in the Clean Air Act (CAA or Act) and Code of Federal Regulations (CFR) for moderate nonattainment areas. This proposal is

based on EPA's review of complete, quality assured and certified ambient air quality monitoring data for the 2007-2009 monitoring period that are available in the EPA Air Quality System (AQS) database. If EPA finalizes this determination, the DFW area will be reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour standard. The serious area attainment date for the DFW area would be as expeditiously as practicable, but not later than June 15, 2013. Once reclassified, Texas must submit State Implementation Plan (SIP) revisions for the DFW area that meet the 1997 8-hour ozone nonattainment requirements for serious areas as required by the Act. In this action, EPA is also proposing that Texas submit the required SIP revisions for the serious area attainment demonstration, reasonable further progress (RFP), reasonably available control technology (RACT), contingency measures, and for all other serious area measures required under CAA section 182(c) to EPA no later than one year after the effective date of the final rulemaking for this reclassification; except that we propose that Texas submit the required SIP revision for the Stage II vapor recovery to EPA no later than two years after the effective date of the final rulemaking for this reclassification, pursuant to section 182(b)(3)(A) of the Act.

DATES: Comments must be received on or before September 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2010-0412, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6comment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at donaldson.guy@epa.gov. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-6762.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such

deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2010-0412, EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m.

and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page to make photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section, (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6521; fax number 214-665-6762; e-mail address paige.carrie@epa.gov.

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I. What is the Background for this proposed action?

A. What are the national ambient air quality standards?

Section 109 of the Act requires EPA to establish a NAAQS for pollutants that "may reasonably be anticipated to endanger public health and welfare" and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local

governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

B. What is ozone and what is the 1997 8-hour ozone standard?

Ozone is a gas composed of three oxygen atoms. It is not usually emitted directly into the air, but at ground level is created by a chemical reaction between volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) in the presence of sunlight. On July 18, 1997, EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855) that was established by EPA in 1979. We revoked the 1-hour ozone standard effective June 15, 2005. See 40 CFR 50.9(b) and 69 FR 23858 (April 30, 2004). Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). See 69 FR 23857 (April 30, 2004).¹ Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percentage of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "Comparisons with the Primary and Secondary Ozone Standards" states: "The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of

¹ For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.084 ppm becomes 84 ppb.

0.085 ppm is the smallest value that is greater than 0.08 ppm.”²

C. What is a SIP and how does it relate to the 1997 8-hour ozone standard?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. The SIPs may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

EPA published a first phase rule governing implementation of the 1997 8-hour ozone standard (Phase 1 Rule) on April 30, 2004 (69 FR 23951). The Phase 1 Rule addressed, among other matters, classifications for Part D subpart 2 areas under the 1997 8-hour standard. The Phase 1 rule was challenged and certain portions of it were vacated by the DC Circuit in *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006), clarified on rehearing, 489 F.3d 1245 (DC Cir. 2007), cert. denied, 128 S.Ct. 1065 (2008). The provisions of the Phase 1 rule that are directly relevant to this proposed rule—classifications for subpart 2 and the related 8-hour ozone standard attainment deadlines—are not among those that were successfully challenged, and they remain effective.

EPA also published a rule governing implementation of the 1997 8-hour ozone standard (Phase 2 Rule) on November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727). The Phase 2 rule addresses SIP obligations for the 1997 8-hour ozone NAAQS, including the SIP elements associated with RACT, reasonably available control measures (RACM), RFP, modeling and attainment demonstrations, new source review (NSR), vehicle inspection and maintenance programs (I/M), and

contingency measures for failure to meet RFP and the attainment date.

For ozone nonattainment areas, requirements for SIPs are contained in part D, subparts 1 and 2 of the Act. Under subpart 2, the applicable control requirements become increasingly more stringent according to an area's classification as marginal, moderate, serious, severe or extreme.

D. What is the DFW nonattainment area, and what is its current 1997 8-hour ozone nonattainment classification?

The current DFW nonattainment area includes nine counties: Collin, Dallas, Denton, Tarrant (the core counties) and Ellis, Johnson, Kaufman, Parker, and Rockwall (the remaining counties). Under the 1-hour ozone standard, the DFW nonattainment area was classified as a “serious” nonattainment area and included only the four core counties. See 63 FR 8128 (February 18, 1998). The remaining counties maintained their initial designation of unclassifiable/attainment for the 1-hour ozone standard. See 56 FR 56694 (November 6, 1991).³ On October 16, 2008, we determined that the DFW 1-hour ozone nonattainment area was attaining the 1-hour ozone standard based upon complete, quality-assured and certified ambient air monitoring data that showed the area had monitored attainment of the 1-hour ozone NAAQS for the 2004–2006 monitoring period (73 FR 61357). That determination allowed certain SIP planning measures to be suspended for so long as the area continues to monitor attainment of the 1-hour ozone standard. Today's proposed rulemaking addresses the area's attainment and reclassification only with respect to the 1997 8-hour ozone standard.

With regard to the 8-hour standard, on April 30, 2004, EPA published the 8-hour ozone designations in conjunction with its Phase I implementation rule (69 FR 23858 and 69 FR 23951, respectively). For areas subject to subpart 2 of the Act, such as the DFW nonattainment area, the maximum period for attainment runs from the effective date of designations and classifications for the 1997 8-hour ozone NAAQS and corresponds to the same length of time provided in Table 1 of section 181(a) of the Act: Marginal—3 years; Moderate—6 years; Serious—9 years; Severe—15 or 17 years; and Extreme—20 years.

The DFW area, consisting of all nine counties, was designated nonattainment for the 1997 8-hour ozone standard and classified as “moderate” based on a

design value of 0.100 ppm, with an attainment date of June 15, 2010 (69 FR 23858). The design value (DV) of an area characterizes the severity of the air quality concern and is represented by the highest DV measured at any ozone monitor in the area. The calculation for the DV is the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration measured at a monitor. In response to the designation, on May 30, 2007, the State of Texas submitted an attainment plan designed to attain the 1997 8-hour ozone standard. The state submitted a supplement to this plan on April 23, 2008. On July 14, 2008, we proposed to conditionally approve the 1997 8-hour ozone attainment demonstration SIP revision for the DFW moderate 8-hour ozone nonattainment area. See 73 FR 40203. We finalized this approval on January 14, 2009. See 74 FR 1903. The DFW area met all of the current requirements for its moderate area classification.

E. What are the CAA provisions regarding determinations of nonattainment and reclassifications?

Section 181(b)(2) of the Act prescribes the process for making determinations upon failure of an ozone nonattainment area to meet the standard by its attainment date, and for reclassification of an ozone nonattainment area. Section 181(b)(2)(A) of the Act requires that EPA determine, based on the area's design value (as of the attainment date), whether or not the area attained the ozone standard by that date. For marginal, moderate, and serious areas, if EPA finds that the nonattainment area has failed to attain the ozone standard by the applicable attainment date, the area must be reclassified by operation of law to the higher of (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying any area that has failed to attain by its attainment date and the resulting reclassification.

II. What is EPA's evaluation of the DFW area's 8-hour ozone data?

EPA is proposing to make its determination of whether the DFW attained the 8-hour ozone standard by its attainment deadline based on quality-assured, quality-controlled ambient air monitoring data for the years 2007–2009. These data, from sites in the DFW area have been certified by TCEQ, and are presented in Table 1. These data show that the DFW area was

² EPA notes that today's proposed action deals with the classifications and SIP obligations associated with the 1997 8-hour ozone NAAQS. On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On January 6, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA anticipates that in 2010 it will have completed reconsideration of the standard and thereafter will proceed with designations. EPA's actions with respect to this new standard do not affect EPA's action here.

³ Designations for Texas begin at 56 FR 56835.

violating the 1997 8-hour ozone standard at the time of its June 15, 2010 attainment deadline. As noted above, the highest design value at any regulatory monitor in the area is considered the design value for the area

(40 CFR 58.1). The Keller and Eagle Mountain Lake monitoring sites recorded the highest 2007–2009 design values, and thus at the time of its attainment deadline, the area had a design value of 0.086 ppm. Thus,

pursuant to section 181(b)(2) of the Act, EPA is proposing to determine that the DFW nonattainment area did not attain the 1997 8-hour ozone NAAQS by the June 15, 2010, deadline for moderate nonattainment areas.

TABLE 1—DFW AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES (PPM)*

| Site name and No. | 4th Highest daily max | | | Design value (2007–2009) |
|--|-----------------------|-------|-------|--------------------------|
| | 2007 | 2008 | 2009 | |
| Fort Worth Northwest, 48–439–1002 | 0.081 | 0.073 | 0.083 | 0.079 |
| Keller, 48–439–2003 | 0.084 | 0.085 | 0.090 | 0.086 |
| Frisco, 48–085–0005 | 0.080 | 0.079 | 0.079 | 0.079 |
| Midlothian OFW, 48–139–0016 | 0.076 | 0.072 | 0.072 | 0.073 |
| Denton Airport South, 48–121–0034 | 0.089 | 0.084 | 0.082 | 0.085 |
| Arlington Municipal Airport, 48–439–3011 | 0.075 | 0.078 | 0.080 | 0.077 |
| Dallas North No. 2, 48–113–0075 | 0.079 | 0.076 | 0.088 | 0.081 |
| Rockwall Heath, 48–397–0001 | 0.074 | 0.073 | 0.078 | 0.075 |
| Grapevine Fairway, 48–439–3009 | 0.089 | 0.077 | 0.086 | 0.084 |
| Kaufman, 48–257–0005 | 0.074 | 0.069 | 0.068 | 0.070 |
| Granbury, 48–221–0001 | 0.081 | 0.073 | 0.077 | 0.077 |
| Eagle Mountain Lake, 48–439–0075 | 0.084 | 0.085 | 0.091 | 0.086 |
| Parker County, 48–367–0081 | 0.088 | 0.077 | 0.080 | 0.081 |
| Cleburne Airport, 48–251–0003 | 0.087 | 0.083 | 0.080 | 0.083 |
| Dallas Hinton St., 48–113–0069 | 0.076 | 0.064 | 0.062 | 0.067 |
| Dallas Executive Airport, 48–113–0087 | 0.080 | 0.077 | 0.079 | 0.078 |
| Greenville, 48–231–1006 | 0.069 | 0.063 | 0.067 | 0.066 |
| Pilot Point, 48–121–1032 | 0.075 | 0.080 | 0.078 | 0.077 |

* Design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR Part 50, Appendix I).

Under section 181(a)(5) of the Act, and 40 CFR 51.907, an area can qualify for up to 2 one-year extensions of its attainment date if it meets the conditions set forth in 40 CFR 51.907. For the 1997 8-hour standard, if an area's fourth highest daily maximum 8-hour average value in the attainment year is 0.084 ppm or less (40 CFR 51.907), the area is eligible for the first one-year extension to the attainment date. The attainment year is the year immediately preceding the attainment date. The DFW area's attainment year is 2009. In 2009, the area's fourth-highest daily 8-hour average from the monitor with the highest average of the area's monitors was 0.091 ppm. 40 CFR 51.907(a), (c). Therefore, the DFW area does not qualify for a 1-year extension of its moderate area attainment deadline.

Section 181(b)(2)(A) of the Act provides that, should an area fail to attain by the applicable date, the area is reclassified by operation of law to the next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B), whichever is higher. Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. The

classification that would be applicable to the DFW area's ozone design value at the time of today's notice is "marginal" because the area's 2009 calculated design value, based on quality-assured ozone monitoring data from 2007–2009, is 0.086 ppm. By contrast, the next higher classification for the DFW area is "serious." Because "serious" is a higher nonattainment classification than "marginal" under the statutory scheme in the Act, upon the effective date of a final rulemaking determining that the DFW has failed to attain the 1997 8-hour ozone standard by the applicable attainment date of June 15, 2010, the DFW area will be reclassified by operation of law as "serious."

III. What actions is EPA proposing?

A. Determination of Nonattainment, Reclassification of the DFW Nonattainment Area and New Attainment Date

Pursuant to section 181(b)(2) of the Act, EPA is proposing to determine that the DFW area did not attain the 1997 8-hour ozone NAAQS by the June 15, 2010, attainment deadline prescribed under the Act for moderate ozone nonattainment areas. If EPA takes final action on this determination as proposed, the DFW area will be reclassified by operation of law from moderate to serious nonattainment.

Serious areas are required to attain the standard "as expeditiously as practicable" but no later than 9 years after designation, or June 15, 2013. The "as expeditiously as practicable" attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 1997 8-hour ozone standard. EPA is proposing a schedule by which Texas will submit the SIP revisions necessary pursuant to reclassification to serious nonattainment of the 1997 8-hour ozone standard.

B. Proposed Date for Submitting a Revised SIP for the DFW Area

EPA is also addressing here the schedule by which Texas would be required to submit a revised SIP. When an area is reclassified, EPA has the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. Pursuant to 40 CFR 51.908(d), for each nonattainment area, the State must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2012 (40 CFR 51.900(g)). The ozone season is the

ozone monitoring season as defined in 40 CFR Part 58, Appendix D, section 4.1, Table D-3 (October 17, 2006, 71 FR 61236). For the DFW area, March 1st is the beginning of the ozone monitoring season. Therefore, we propose that Texas submit the required SIP revisions, including the attainment demonstration, RFP, RACT, contingency measures, and other applicable serious area requirements to EPA as expeditiously as practicable, but not later than one year after the effective date of the final rulemaking for this reclassification. In addition, all applicable controls shall be implemented no later than March 1, 2012, the start of the ozone season for the attainment year.

Pursuant to section 182(c) of the Act and as further referenced below, the requirements for serious ozone nonattainment areas include, but are not limited to: (1) Attainment and reasonable further progress demonstrations (CAA section 182(c)(2), 40 CFR 51.908 and 40 CFR 51.910); (2) an enhanced monitoring program (CAA section 182(c)(1) and 40 CFR 58.10); (3) an enhanced vehicle inspection and maintenance program (CAA section 182(c)(3) and 40 CFR 51.350); (4) clean fuel vehicle programs (CAA section 182(c)(4)); (5) transportation control (CAA section 182(c)(5)); (6) a 50 ton-per-year major source threshold (CAA

section 182(c) and 40 CFR 51.165); (7) more stringent new source review requirements (CAA section 182(c)(6) and 40 CFR 51.165); (8) special rules for modification of sources (CAA sections 182(c)(7) and 182(c)(8), and 40 CFR 51.165); (9) contingency provisions (CAA section 182(c)(9)); and (10) increased offsets (CAA section 182(c)(10) and 40 CFR 51.165). See also the requirements for serious ozone nonattainment areas set forth in section 182(c) of the Act.

In addition, the requirements of section 182(b)(3) relating to Stage II gasoline vapor recovery shall apply, provided EPA has not yet found that onboard vapor recovery (ORVR) is in widespread use in the motor vehicle fleet and waived the section 182(b)(3) requirement.⁴ Pursuant to section 182(b)(3)(B), we propose that Texas submit the SIP revision relating to Stage II vapor recovery to EPA no later than two years after the effective date of the final rulemaking for this reclassification, since that corresponds to the period that moderate and worse nonattainment areas were first required to submit Stage II SIPs following enactment of the 1990 CAA Amendments. Section 182(b)(3) requires implementation of Stage II controls within 6 months to two years after the date of adoption by the state of requirements for the installation and

operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles, depending on the age and throughput of the facility.⁵

The DFW 1-hour ozone nonattainment area was reclassified as serious for that standard on February 18, 1998 (63 FR 8128), so the 1-hour ozone standard requirements applicable to the area are those that apply to nonattainment areas classified as serious. Under the 1-hour ozone standard, Collin, Dallas, Denton and Tarrant counties were all classified as serious. As such, many of the requirements listed above are already being implemented in those areas, as specified in Table 2 below. However, some of these requirements will be new to the five remaining counties that were not included in the 1-hour ozone nonattainment area for DFW; these are also provided in Table 2 below. EPA also notes that there may be sources in the five remaining counties that will be newly subject to Title V and will have one year from the effective date of the final rulemaking for this reclassification to provide TCEQ with a Title V permit application.⁶ A list of the requirements already in place and those yet to be implemented in the DFW area is provided in Table 2 below:

TABLE 2—STATUS OF REQUIREMENTS FOR THE PROPOSED DFW 1997 8-HOUR OZONE SERIOUS NONATTAINMENT AREA

| Requirement | Status | Action needed or date approved by EPA |
|---|---|--|
| Attainment Demonstration 182(c)(2)(A) | Due 1 year from the effective date of the final rulemaking for this action. | Must be submitted to EPA for approval. |
| RFP Demonstration 182(c)(2)(B) | Due 1 year from the effective date of the final rulemaking for this action. | Must be submitted to EPA for approval. |
| Enhanced monitoring 182(c)(1) | Due 1 year from the effective date of the final rulemaking for this action. | Must be submitted to EPA for approval. |
| Enhanced I/M program | Implemented in all 9 counties | November 14, 2001 (66 FR 57261). |
| Clean-fuel vehicle programs 182(c)(4) | Equivalency program due 1 year from the effective date of the final rulemaking for this action ⁷ . | Must be submitted to EPA for approval. |

⁴ Section 182(b)(3) imposes the Stage II requirement on moderate and worse ozone nonattainment areas, but pursuant to section 202(a)(6), section 182(b)(3) applied only in serious and worse areas after EPA promulgated rules for ORVR in 1994. Section 202(a)(6) additionally allows EPA to revise or waive the section 182(b)(3) requirement for all ozone nonattainment areas after EPA determines that ORVR is in widespread use throughout the motor vehicle fleet. If EPA finds that ORVR is in widespread use and waives the section 182(b)(3) requirement in advance of the date by which new serious areas would otherwise be required to implement Stage II controls, such areas would no longer be subject to the section 182(b)(3) requirement. Further, for any areas that already implement Stage II, to remove Stage II controls following an EPA widespread use and waiver decision, any EPA SIP approval would be subject to the CAA section 110(l) requirement that the revision does not interfere with any applicable requirement of the CAA.

⁵ Pursuant to section 182(b)(3)(B), the compliance date shall be (i) 6 months after the adoption date,

in the case of gasoline dispensing facilities for which construction commenced after the date of the enactment of the Clean Air Act Amendments of 1990; (ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or (iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities. Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

⁶ As stated earlier in this notice, in regards to requirements for SIPs regarding review of new or modified major stationary sources (“new source review”), the reclassification proposed herein would not lower the “major source” thresholds required in the four core counties because the statutory thresholds that applied by virtue of the area’s classification under the 1-hour ozone standard continue to apply as anti-backsliding measures for the 1997 8-hour ozone standard (see *South Coast Air Quality Management Dist. v. EPA*,

472 F.3rd 882 (DC 2006) rehearing denied 489 F.3d 1245, clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). In EPA’s Phase 1 rule, EPA made NSR applicability thresholds dependent upon the status and classification of an area under the 1997 8-hour standard. The effect of the ruling in the *South Coast* case is to restore NSR applicability thresholds pursuant to the classifications previously in effect for areas designated nonattainment for the 1-hour standard. See EPA memorandum from Robert J. Meyers, “New Source Review (NSR) Aspects of the Decision of the U.S. Court of Appeals for the District of Columbia Circuit on the Phase 1 Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS),” dated October 2, 2007. As provided in CAA sections 501 and 502(a) and 40 CFR 70.2, 70.3(a), 71.2 and 71.3(a), the thresholds at which a source is required to apply for and operate a Title V operating permit are linked to the NSR “major source” applicability threshold.

TABLE 2—STATUS OF REQUIREMENTS FOR THE PROPOSED DFW 1997 8-HOUR OZONE SERIOUS NONATTAINMENT AREA—Continued

| Requirement | Status | Action needed or date approved by EPA |
|---|---|---|
| Transportation control 182(c)(5) | Transportation controls in place under the 1997 8-hr ozone moderate nonattainment area SIP. | Adopt transportation controls as needed in the serious nonattainment area and submit to EPA for approval. |
| 50 tpy threshold for VOCs 182(c) | Implemented in all 9 counties | July 17, 2008 (73 FR 40972). |
| 50 tpy threshold for NO _x | Implemented in all 9 counties | December 3, 2008 (73 FR 73562). |
| De minimis rule 182(c)(6) | Implemented in core counties | Must be expanded to all 9 counties. |
| Special rule for modifications of sources emitting less than 100 tons. 182(c)(7). | Implemented in core counties | Must be expanded to all 9 counties. |
| Special rule for modifications of sources emitting 100 tons or more. 182(c)(8). | Implemented in core counties | Must be expanded to all 9 counties. |
| Contingency provisions 182(c)(9) | Due 1 year from the effective date of the final rulemaking for this action. | Must be submitted to EPA for approval. |
| Offsets of 1.2 to 1 182(c)(10) | Implemented in core counties | Must be expanded to all 9 counties. |
| Stage II vapor recovery | Implemented in core counties | Submit evidence of widespread use or expand Stage II SIP to all 9 counties. ⁴ |

IV. Proposed Action

Pursuant to section 181(b)(2) of the Act, EPA is proposing to determine, based on certified, quality-assured monitoring data for 2007–2009, that the DFW area did not attain the 1997 8-hour ozone standard by the applicable June 15, 2010 attainment deadline. If EPA finalizes this determination, upon the effective date of the final determination DFW will be reclassified by operation of law as a serious 1997 8-hour ozone nonattainment area. Pursuant to section 182(i) of the Act, EPA is also proposing the schedule for submittal of the SIP revisions required for serious areas once the DFW area is reclassified. We propose that Texas submit the required SIP revisions for the serious attainment demonstration, RFP, RACT, contingency measures, and for all other serious area measures required under CAA section 182(c) to EPA no later than one year after the effective date of the final rulemaking for this reclassification; except that we propose that Texas submit the required SIP revision for the Stage II vapor recovery to EPA no later than two years after the effective date of the final rulemaking for this reclassification, pursuant to section 182(b)(3)(A) of the Act.

V. Statutory and Executive Order Reviews

Under section 181(b)(2) of the CAA, a determination of nonattainment is a factual determination based upon air quality considerations and the resulting reclassification must occur by operation of law. A determination of nonattainment and the resulting

reclassification of a nonattainment area by operation of law under section 181(b)(2) does not in and of itself create any new requirements, but rather applies the requirements contained in the Clean Air Act. For these reasons, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 Clean Air Act; 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: July 28, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–19574 Filed 8–6–10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1060]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On July 2, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in

⁷ In 2005, the Texas Legislature repealed the Texas Clean Fuel Fleet substitute program. As a result, Texas must submit an equivalency demonstration. See 75 FR 27514, beginning on page 27524 (May 17, 2010).